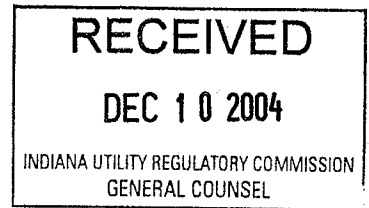


STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION



IN THE MATTER OF THE COMMISSION'S)	
PROPOSED RULEMAKING CONCERNING)	
CUSTOMER SERVICE RIGHTS AND)	IURC RM #04-02
RESPONSIBILITIES FOR ELECTRIC, GAS,)	
WATER, SEWER AND)	
TELECOMMUNICATIONS UTILITIES)	

**REPLY COMMENTS OF THE INDIANA
TELECOMMUNICATIONS ASSOCIATION**

The Indiana Telecommunications Association ("ITA")¹, by its undersigned counsel, respectfully submits its Reply Comments² with regard to the above-captioned rulemaking regarding proposed amendments to certain existing telecommunications customer service rights and responsibilities ("CR&R") rules.

The ITA's Reply Comments address a number of the comments of the Indiana Office of Utility Consumer Counselor ("OUCC") that have been submitted with regard to the proposed amendments to the existing telecommunications CR&R rules.

170 IAC 7-1.3-3 – Creditworthiness of residential customer; deposits; refund.

1. Credit Scores (170 IAC 7-1-3-3(b)(1)).

The Commission's proposed Rule 3(b)(1) permits a LEC to require a residential service applicant or customer to satisfactorily establish his or her financial responsibility (creditworthiness). The LEC may require a deposit or other reasonable guarantor to secure payment of bills before providing local exchange service if not deemed creditworthy because

¹ The ITA is a trade group/association that has represented the interests of the telecommunications industry in Indiana for over 100 years. The ITA's membership consists, in part, of forty (40) incumbent local exchange telecommunications carriers providing telephone service to their customers in Indiana comprising approximately 3.3 million access lines.

² The ITA timely submitted its initial Comments in this rulemaking on November 12, 2004. References to those initial Comments shall be made from time to time in the submission of these Reply Comments.

such applicant or customer “does not meet or exceed the predetermined minimum credit score selected by the LEC using a credit scoring system as provided in the LEC’s tariff.”

The OUCC believes that the Commission should not alter its current rules to determine creditworthiness found in Rule 3(b)(1) and (2), but modify instead some of the criteria used in the IURC’s current rules. (OUCC’s Comments, 2, 36-41). The OUCC characterized their recommendation as “Scrap Proposed and Modify Current Creditworthiness Criteria.” (OUCC Comments, 40). In essence, the OUCC seeks to “scrap” the Commission’s laudable efforts to simplify and modernize an existing service rule that has been in effect since 1979.³ Maintaining the status quo, as the OUCC suggests, fails to recognize technological advances, the expansion of local exchange telecommunications competition, and other circumstances in the marketplace that have changed over the past twenty-five years. Proposed Rule 3(b)(1) will enable carriers to have the flexibility to determine creditworthiness using a credit scoring system that reflects common practices of firms operating in today’s competitive marketplace.

OUCC contends the use of credit scores may be an acceptable measure of creditworthiness “in a market industry”, however it argues that such scores are an “overly exclusive measure” with regard to a regulated market where consumers generally have no options with respect to service providers. (OUCC’s Comments, 38). To illustrate its position, OUCC cites the example of an applicant who has recently graduated from high school or college, presumably with no credit history. OUCC argues that he/she would likely not be assigned any credit scores and thus be required to pay a deposit to get telephone service, regardless of consumer’s ability to pay that could be demonstrated by alternate means such as income or work history. If a prospective applicant has received no utility service in the past, that individual has

³ Revised telecommunications CR&R rules were promulgated and took effect in February, 2003, but the creditworthiness rule has remained virtually unchanged since 1979.

no credit history with any utility. No LEC should be required to assume the burden for non-payment of bills by such an applicant based upon non-existent payment history.

With respect to the OUCC's concern about credit scoring, an amendment to the federal Fair Credit Reporting Act (FCRA) requires each of the nationwide consumer reporting companies to provide a free copy of an individual's credit report, upon request, once every 12 months, from www.annualcreditreport.com. Starting in early 2005, this will enable consumers to review their credit scores and correct any inaccuracies or incomplete information. Credit reports are commonly used by creditors, insurers, employers, and other businesses to evaluate applications for credit, insurance, employment, or renting a home. Utilities should not be precluded from using this valuable tool for determining creditworthiness.

The ITA respectfully submits that the Commission proposed Rule 3(b)(1) is reasonable. In the absence of internal credit history relating to an applicant for residential telephone service, credit scores serve as one of the most predictable indicators of what a customer will do with regard to the payment of his bills. Income or work history of an applicant is not necessarily a reliable indicator of how an applicant will pay their bills. In an era of rising uncollectibles, credit scores are a reasonable means to ensure the payment of future billings. LECs should not be precluded from availing themselves of valuable tools such as credit scoring to determine creditworthiness.

For all the foregoing reasons, the ITA respectfully submits that the Commission should reject the OUCC's recommendations as to Proposed Rule 3(b)(1).

2. Regulated/unregulated charges: clarity and uniformity (170 IAC 7-1-3-3(c)).

The OUCC's Comments request clarification from the Commission as to what it defines as regulated or unregulated services, as well as deniable and non-deniable services. (OUCC's Comments, 41-42). The OUCC requests that all carriers be required to specifically identify in

their tariffs and in their monthly bills the services the carrier considers regulated or unregulated, the charges the carrier considers to be deniable or non-deniable, and what this means to the customer.

The ITA respectfully submits that the OUCC's request is somewhat difficult to comprehend, since any services that a LEC provides to its customers that are regulated appear in that respective company's tariff and any unregulated services are not in the respective tariffs.⁴ As for clarification of deniable and non-deniable charges, the Commission has already defined such terms in 170 IAC 7-1.3-2. The only exception to a LEC's ability to disconnect basic local service to a customer is for non-payment of any toll charges or unregulated telecommunications services. (See, Rule 11(d)(2)(A)). Should the customer fail to pay for all deniable services, the customer may face disconnection of his or her basic local residential telephone service. The Commission's current Rule 6(e)(2) requires the carrier "to clearly and inconspicuously" identify on the bill what charges a customer must pay in order to avoid disconnection. Thus, there is no further need for clarity and/or uniformity as the OUCC requests in its Comments. The classification of regulated or unregulated services is maintained by each of the member ITA companies, warranting no further action on the part of the Commission.

The OUCC also makes reference to a copy of a current SBC bill, contending that SBC Indiana would disconnect and deny basic local phone service for non-payment of Caller Identification service. (OUCC Comments, 42).

The ITA has been informed by SBC Indiana, an ITA member company, that its Caller ID Number service had been mistakenly classified as a deniable service. This error is being corrected and will be effected with the December, 2004 billing release to its residential telephone customers.

⁴ There is one exception to this statement: Caller ID Number service, an unregulated service provided by SBC Indiana, now resides in its tariff due to the price cap restrictions set forth in its alternative regulation plan.

The ITA would respectfully submit that the spirit of the Commission's rules is to ensure that any services that are improperly classified as deniable should be reclassified as non-deniable for the protection of the consumer in order to avoid unwarranted disconnection of basic local residential telephone service. However, if any company wishes to classify services that are deniable as nondeniable, such companies should be allowed to do so, since such reclassification inures to the benefit and protection of the consumer. In this regard, consistency or uniformity should not be the cornerstone of such companies' initiatives where the consumer is benefited as a result of any such reclassification.

3. Disclosure of Applicant's Social Security Number.

The OUCC recommends that the Commission add a new provision to the creditworthiness rules to provide that, while utilities may request a customer to provide a Social Security number "for legitimate business purposes" to establish positive identification and creditworthiness, nonetheless whenever such a request is made the utility must also inform the consumer of "reasonable alternative methods" for meeting such business purposes without requiring the disclosure of the consumer's Social Security number. (OUCC's Comments, 3, 41).

The ITA respectfully submits that the OUCC's recommendation in this regard is nothing more than an attempt to impose further, unnecessary administrative burden and expense on the LEC in order to do business with their customers.

Obtaining a prospective customer's Social Security number has proven to be a useful tool in establishing their identity in order to provide service. In addition, it also ensures a measure of protection is afforded to the customer's account to prevent service from being altered without their consent, absent the submission of the customer's Social Security number. It is important to protect the customer from unauthorized access to customer-sensitive information maintained on their behalf by the LEC. An individual's inability or unwillingness to proffer a customer's

Social Security number upon request may indicate to the LEC that it is not dealing with the customer whose account is being queried. By reason of the foregoing, OUCC's recommendation to not require disclosure of the prospective customer's Social Security number not only hampers a LEC's ability to run its business, but also hinders its ability to protect the interests of its customers.

The ITA respectfully submits that the OUCC's recommendation should be rejected.

4. Installment arrangements for high deposit requirements (170 IAC 7-1.3-3(d)).

The Commission's proposed Rule 3(d) would allow an applicant or customer with a deposit requirement of greater than one hundred fifty dollars (\$150) to pay such deposit in equal installment payments over a period of no fewer than three months and allow for service to be connected after the first installment payment has been made by the prospective applicant or customer. The ITA's initial comments request that the Commission abandon this proposed amendment to the rule for several reasons. Aside from the significant and expensive alterations that would be required to the member ITA companies' billing systems to allow the collection of deposits on an installment basis, permitting extended installments on deposit requirements unfairly shifts the risk (and the burden of nonpayment) onto the shoulders of the LEC instead of customer, where the ITA submits such burden should properly reside. (ITA's Comments, 7-8).

The OUCC supports the Commission's proposed Rule 3(d), but also recommends that this proposed rule be modified even further to allow consumers to pay deposits of more than seventy dollars (\$70) but less than one hundred fifty dollars (\$150) in two monthly installments. The OUCC suggests that such an accommodation would be "especially beneficial to a consumer securing housing on their own for the first time and who may be required to pay a deposit on each utility service". (OUCC's Comments, 3-4, 43).

For reasons similar to those stated in its initial Comments, the ITA respectfully submits that the Commission should reject the OUCC's recommendation for further expansion of the Commission's proposed Rule 3(d). The OUCC offers no valid justification for its proposed expansion of this rule to encompass deposit situations in excess of seventy dollars (\$70), but less than one hundred fifty dollars (\$150). The OUCC's proposal compounds the problems associated with permitting installment payment arrangements for deposits by the applicant to the LEC. It unfairly shifts the risk for non-payment immediately to the shoulders of the LEC in such initial deposit situations where the applicant or customer has demonstrated that they are *not* creditworthy. Moreover, it imposes further unwarranted expense on the member ITA companies in terms of altering their billing systems to accommodate an even greater universe of applicants or customers in deposit situations.

5. Refund of interest on deposits (170 IAC 7-1.3-(3)(i)(1) and 3(l)).

The Commission's proposed Rule 3(i)(1) (currently Rule 3(h)) provides that a deposit held more than thirty days shall earn interest from the date of deposit at a rate of interest set by the Commission based upon the then-existing rate for one-year United States Treasury Bills. In December of each year, the Commission issues a general administrative order establishing the interest rate for the next calendar year that should be paid on all deposits held during all or part of the subsequent year. In effect, the Commission's Rule provides for an annual crediting of interest to the customer deposits at the applicable interest rate that was set. The Commission's proposed rulemaking makes no substantive changes to this existing rule.

The Commission's proposed Rule 3(l) would establish a new provision that requires at the end of every year of telephone service, if the deposit plus interest has not been refunded to the customer, the LEC shall automatically refund the accrued interest on the deposit to the customer by crediting the customer's account, stating this credit clearly on the customer's next regular bill.

While the OUCC supports the Commission's establishment of an annually adjusted interest rate on customer deposits suggesting such interest rate "more accurately reflects current market rates," the OUCC nonetheless recommends that language be added to the Commission's proposed Rule 3(i) that provides interest earned on all deposits be credited monthly and compounded daily. (OUCC's Comments, 44). At the same time, in regard to Rule 3(l), the OUCC expresses concern that the expense of the provision for annual crediting of interest "may outweigh the benefits to the consumer, particularly with regard to very small utilities". (OUCC's Comments, 44-45). Consequently, the OUCC recommends that this provision be amended to apply only to deposits of more than seventy-five dollars (\$75).

The ITA respectfully submits that the OUCC's Comments as to proposed Rule 3(i)(1) and 3(l) are inherently inconsistent with each other. On the one hand, the OUCC argues that *monthly* crediting of interest on *any* customer deposit should be implemented in regard to Rule 3(i)(1). On the other hand, with regard to Rule 3(l), the OUCC recommends *annual* crediting of interest on *all* customer deposits exceeding seventy-five dollars (\$75). Moreover, while ostensibly supporting the Commission's current Rule 3(h), the OUCC nonetheless promotes monthly crediting/daily compounding of interest on deposits. Given the foregoing, the OUCC's position on each of these proposed rules cannot be reconciled.

All that aside, the ITA respectfully submits that the OUCC's recommendation of the monthly crediting/daily compounding of interest be rejected. The OUCC's Comments fail to demonstrate how the Commission's existing rule, guaranteeing the existing rate for one-year United States Treasury Bills on deposits, is inequitable or unfair to the customer, warranting a modification of this rule. Accepting the OUCC's recommendations as to Rule 3(i)(1) would furthermore require extensive and costly system enhancements in order to be implemented and impose very labor

extensive responsibilities on telecommunications carriers that are typically found only in the banking industry.

With respect to proposed Rule 3(l), the ITA shares OUCC's concern about the costs of this proposed rule outweighing its benefits, but respectfully submits that such proposed rule should be deleted entirely because it would require significant, costly upgrades to telephone companies' systems in order to implement such a provision. As was demonstrated in its initial Comments, given low interest rates and the relatively small deposits that are being collected by LECs from customers (since anticipated toll charges are no longer included in the calculation), the administrative cost to the LEC would far outweigh the amounts expected to be refunded to the customer under this proposed provision. (ITA's Comments, 10). The overall cost to the LECs in implementing such a provision would be far more onerous when compared to what would be realized in terms of a refund of annual accrued interest to the customer regardless of what dollar level of deposit such proposed rule would apply.

While customers currently do not annually receive a refund of interest on an existing deposit, such interest is nonetheless still earned by those customers on their accounts as now provided by Rule 3(h). The customers will receive such interest when a full refund of their deposit is made by the LEC or when such deposit is applied to any outstanding indebtedness on the customer's final bill. Moreover, it is important to note that the application of the Commission's proposed Rule 3(l) would relate to those customers who are not entitled to receive a refund of their deposits in the first place, because they are not submitting satisfactory payment on their current bills in ten out of any twelve consecutive months without late payment. (See, current Rule 3(i)(1)). Proposed Rule 3(l), no matter how it is cast, imposes unwarranted expense and burden upon the LEC in favor of those customers whose accounts are rated unsatisfactory. The Commission should not promote such a result.

170 IAC 7-1.3-8 – Customer complaints to the utility.

Customer complaint reports (170 IAC 7-1.3-8(e)).

The Commission's proposed rulemaking makes minor, nonsubstantive changes to current Rule 8(e), which requires a utility, at the request of the Commission, to submit a report to the Commission covering the previous twelve month period relative to the number of customer complaints made to the utility under this rule.

The OUCC recommends that it be added to this rule as an entity that may request a report from a utility, summarizing certain information about consumer complaints received by the utility for the past twelve months. (OUCC Comments, 4-5, 45). The OUCC opines that there have been occasions in the past when such authority would have been useful in investigating and addressing concerns before or possibly without the need for a formal proceeding at the IURC. (OUCC Comments, 4-5). The ITA submits that it is unnecessary and would be inadvisable to adopt the OUCC's recommendation.

Should any customer complaint rise to such a level so as to warrant the appearance by the OUCC in such matter to adequately represent such customer's interest, the Commission's current rules applicable to matters of practice and procedure before the Commission afford the OUCC the right to request, in writing, discovery from any utility relative to the complaint raised by the customer. (See, 170 IAC 1-1.1-16). The ITA respectfully submits that the OUCC's recommendation in this regard be rejected inasmuch as it would foster an unwarranted excursion into utility records by the OUCC without justification.

170 IAC 7-1.3-10 – Customer payments.

1. Payment arrangements under public assistance programs (170 IAC 7-1.3-10(a)(3)).

The Commission proposes under a new Rule 10(a)(3) that the customer's payment arrangement reached with the LEC for outstanding balances of deniable charges shall provide the

customer with adequate opportunity to apply for and receive the benefits of “any available public assistance program” (emphasis added). The ITA’s initial Comments respectfully submitted that this proposed rule should be modified to only specifically refer to the available Lifeline/LinkUp programs, since such programs are the only public assistance programs specifically applicable to prospective customers seeking local residential telephone service. (ITA’s Comments, 15-16).

The OUCC recommends that this provision be amended to include a requirement that the utility provide customers seeking public assistance with contact information for the available public assistance programs of which the utility is aware. (OUCC’s Comments, 46).

The ITA respectfully submits that the recommendation of the OUCC is unwarranted. Current Rule 5(b), unaffected by this proposed rulemaking, requires all LECs, when taking an order for new telephone service, to provide the applicant the least expensive telephone service available and specifies that the description of such service “shall include Lifeline/LinkUp services for eligible customers.” Aside from this provision, the only public assistance program available to reduce the tariffed rates for basic residential telephone service is the Lifeline/LinkUp program. To require a LEC to provide customers with contact information for other available public assistance programs which do not relate to a reduction of charges for local residential telephone service would impose an unnecessary burden and expense on LECs, wholly unrelated to their responsibility of provisioning residential telephone service.

2. Toll-block service.

The OUCC requests the Commission to amend its proposed Rule 10 by adding a new Rule 10(h) which would require all LECs to provide toll-block service to all consumers upon request and at no charge. (OUCC Comments, 46-47).

The ITA respectfully submits that the OUCC’s recommendation in this regard is not warranted and should therefore be rejected. The Commission’s current Rule 11(c)(2) permits a

LEC to place a toll restriction on a customer's line for nonpayment of toll charges. If the LEC initiates such toll restriction, there is no charge for that service. There is no reason to afford free toll-blocking to residential telephone customers other than qualified residential customers under the applicable Lifeline program who have demonstrated a valid financial need.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A. David Stippler", is written over a horizontal line.

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